Congresswoman Stephanie Murphy
Floor Statement for the Record in Opposition to S. 84
Providing for an exception to the limitation against appointment of persons as Secretary of Defense within seven years of relief from active duty
January 13, 2017

Mr. Speaker, I rise—reluctantly—in opposition to S. 84.

There is a federal law, enacted as part of the National Security Act of 1947, providing that the Secretary of Defense shall be "appointed from civilian life by the President." Originally, the law provided that the individual being considered for appointment to this position cannot have served as a commissioned officer in a regular component of the military within 10 years of his appointment as Secretary. In 2008, Congress amended the law from 10 years to seven years.

The law, which is rooted in the deeply American principle that civilians should exercise control over the military, does not provide for any waivers or exceptions. In the 70 years that this statutory restriction has been on the books, Congress has only once enacted legislation to suspend the restriction. In September 1950, in the first year of the Korean War, Congress—acting at the behest of President Truman—approved legislation to suspend the provision in order to enable General George Marshall, at the time an active-duty member of the military, to serve as Secretary of Defense. The 1950 law providing for the suspension referenced General Marshall by name and expressed the sense of Congress that "after General Marshall leaves the office of Secretary of Defense, no additional appointments of military men to that office shall be approved."

This Congress is now being asked to provide a second exemption. President-elect Trump has nominated former General James Mattis—who was, by nearly all accounts, one of the nation's most distinguished and capable military officers, inspiring loyalty from the men and women under his command—to serve as Secretary of Defense. Because General Mattis retired from active service within the last seven years, Congress must enact legislation suspending applicable law in order for General Mattis to become Secretary.

While the Constitution gives the Senate the sole power to *confirm* presidential nominees, we are not talking simply about a confirmation process here. To the contrary, we are also dealing with the enactment of significant, potentially precedent-setting legislation. That means that both the Senate and the House must approve the bill authorizing the exception before it is sent to the

president for signature. It is up to each chamber to determine whether General Mattis is uniquely qualified to serve as Secretary of Defense, such that legislation suspending generally applicable law would be warranted.

General Mattis testified before the Senate Armed Services Committee, and was fully prepared to testify before the House Armed Services Committee. However, despite General Mattis' willingness to appear before the House Armed Services Committee, the president-elect's transition team declined to make him available to testify.

This decision is difficult to fathom, and strikes me as an unforced error. It is highly likely that, were General Mattis to testify, the House Armed Services Committee would conclude in bipartisan fashion that approving legislation granting an exception to General Mattis is appropriate. I, personally, would be likely to support an exception, in light of General Mattis's impeccable record of service.

But I cannot in good conscience support legislation granting an exemption without the House Armed Services Committee having had the opportunity to speak with General Mattis, to ask him about his views on civilian-military relations and other issues related to our national defense, and to take the full measure of the man. To reiterate, based on everything I know about General Mattis, he would have passed this test with flying colors.

We are a nation of laws. We abide by those laws whether they are convenient or not. Federal law, in place for many decades, prohibits a former military officer within seven years of his departure from active military service from being appointed as Secretary of Defense. We can debate whether this law should be modified, but unless and until it is, it remains the law. Congress can, as it has on one previous occasion, enact legislation to suspend this law. As long as the law remains on the books, it stands to reason that exceptions to the law should be granted only in *exceptional* circumstances, where the individual to be appointed is uniquely qualified in light of all the circumstances. The House Armed Services Committee cannot reasonably be expected to make such a determination without at least having had an opportunity to pose questions to that individual.

My hope is that the president-elect's transition team would reconsider its decision not to authorize General Mattis to testify before the House Armed Services Committee, that General Mattis would so testify (as he is prepared to do), and that the Committee would act expeditiously on legislation to exempt General Mattis—and Mr. Mattis *alone*, which the broadly-worded legislation before us does not do—from generally applicable federal law.

Thank you.